IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO.2 OF 2002

The SLAO (2)
and
Hariram Chabbal Singh & ors. Claimants
and
Executive Engineer Acqn.Body

Mr.Dhopatkar for SLAO & Acquiring Body.
Mr.J.K.Rele for claimant no.1.
Mr.Rajesh Parab for claimant no.2.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 12th July 2006

PC :

1. This is a reference under section 30 of the Land Acquisition Act, 1894.

2. Directions were issued to the claimants to file affidavit in lieu of examination in chief within seven weeks from 6th June 2005. Accordingly, an affidavit on 6th November 2005 in lieu of examination in chief has been filed by claimant no.1 Hariram. As far as claimant no.2 is concerned, a Power of Attorney holder filed an affidavit on 26th July 2004 but it is common

ground that this affidavit was not treated as an affidavit in lieu of examination in chief and that is how the directions were issued by this Court on 6th June 2005.

3. On 19th June 2006 this matter had appeared before me and it was pointed out to me that although appearance is filed on behalf of claimant no.2 by Shri Parab, none had appeared on earlier occasions nor any affidavit in lieu of examination in chief has been filed by claimant no.2.

4. In these circumstances, I passed an order on 19th June 2006 and paragraphs 3, 4 and 5 of the said order read thus :-

> "3. Claimant no.2 has filed an affidavit on 26th July 2004 in which he states that he is the rightful claimant and entitled to compensation of Rs. 1,62,888.20. It would be in the interest of justice, if an opportunity is afforded to claimant no.2 to cross examine claimant no.1 as also to lead his evidence. However, Mr.Rele informs me that Mr.Parab who has been engaged by claimant no.2 has not been appearing in this matter, though the reference is pending in this Court for more than four years. Directions to place affidavits in lieu of examination of chief have been issued from time to time and my attention is invited to the order dated 28th October 2005 in that behalf.

> 4. In the above circumstances, office to issue notice to Mr.Rajesh Parab, Advocate as also claimant no.2, Narayan Nanaji Digarse, calling upon him to appear before this Court to cross examine claimant no.1 so also to file an affidavit in lieu of examination in chief of claimant no.2. Affidavit filed by power of attorney holder of claimant no.2 on 26th July 2004 has not been accepted by this Court as the affidavit in lieu of examination in chief and that order is already noted by me hereinabove.
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> 5. In these circumstances, last opportunity is afforded to claimant no.2 to cross examine claimant no.1 and to lead his evidence, failing which on the returnable date this Court will proceed on the basis of evidence that is placed on record till that date."

5. This matter was placed before me yesterday when claimant no.2 Narayan Nanaji Digarse stated that he does not wish to file any claim nor cross examine claimant no.1. However, since his advocate was not present yesterday, I adjourned the matter till today. This was to subserve the larger interest of justice and to give him a last opportunity.

6. Today, Shri Parab appears for claimant no.2. Claimant no.2 is also present in the Court. Claimant no.2 states that he does not wish to proceed with the matter nor is he interested in claiming the compensation or a share therein.

Claimant no.2 has instructed Shri Parab to make the statement and he has no objection to appropriate orders being passed by this Court.

7. Section 30 of the Land Acquisition Act reads thus :-

> "S.30.- Dispute as to apportionment.-
>
> When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court."

8. From a bare perusal of the same it is apparent that when the amount of compensation has been settled u/s 11 and any dispute arises as to the apportionment of the same or any part thereof or to the person to whom the same or any part thereof is payable, the Collector has a discretion to refer this dispute for the decision of the Court.

9. Section 31 deals with payment of compensation or deposit of the same in the Court.

10. In the present case it is apparent that when

this reference was made to the Court, this Court had before it the application in that behalf made by the Collector. He has pointed out therein that there is no amicable settlement between the claimants regarding part payment of compensation. It is also recorded that as far as other part is concerned, there was a settlement between the claimants and a sum of Rs.20,57,585.80 Ps. was paid to claimant no.1 Hariram which he received under protest. He thereafter claimed the entire amount of compensation on the strength of corrected Index-II. Thus, he raised a dispute. The balance sum of Rs.1,62,999.20 Ps. was the amount covered by the said dispute, and, therefore, a reference was made by the Collector to this Court and the amount has been deposited in this Court pursuant to the mandate of sub section 2 of section 31.

11. Now, claimant no.1 Hariram has filed an affidavit annexing therewith Deed of Assignment and Index-II certificates after amendment. Shri Rele tenders the originals of the Deed of Assignment and amended Index-II. The same are taken on record and marked as Exhibits C-1 and C-2.

12. Shri Parab has declined to cross examine claimant no.1. The claimant no.2 has also not been able to substantiate his plea that he has a right to receive the aforesaid sum deposited in this Court or any part thereof.

13. In the light of the above development, the reference is disposed of by directing that the amount deposited by the Collector in this Court, shall be paid over to claimant no.1. All concerned to act on an ordinary copy of this order duly authenticated by the Registry.

14. Leave is granted to Shri Rele for claimant no.1 to take back the originals which have been tendered on record by substituting them with photostat true copies duly certified as per rules.

(S.C.DHARMADHIKARI, J.)